IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.163 OF 1998

Dharma Dagadu Pise & Anr. ...Appellants

vs.

Bhimrao Digambar Sawant & Ors. ...Respondents

Mr.P.M.Megane for the Appellants
Mr.S.S.Patwardhan for Respondent No.1.

CORAM: A.S.OKA,J.
DATE : NOVEMBER 26,2007.

P.C.:

1. Heard Advocate for the Appellants. The Appellants are the original defendant Nos.1 and 2. The trial court dismissed the suit filed by the first Respondent. The Appellate Court has passed a decree granting perpetual injunction restraining the defendants in the suit from obstructing the first Respondent from exercising his right of taking well water from the well situated in block No.184 to the extent of one third share.

2. The submission of the learned Advocate for the Appellants is that the Appellants are the bonafide purchasers and when they purchased the property, the entry of the name of the first Respondent-plaintiff was not appearing in the revenue record. Secondly, he submitted that the suit for perpetual injunction without claiming relief of declaration was not maintainable.

3. I have considered the submissions. Even the trial court has not recorded a finding that the Appellants were bonafide purchasers. Moreover, the finding of the Appellate Court is based on consistent revenue record showing one third share of the first Respondent in the enjoyment of the suit well. The Appellate Court has considered the entire oral and documentary evidence on record and has recorded a finding of fact regarding existence of the right in favour of the first Respondent. The said finding is not shown to be perverse.

4. The suit for injunction filed by the first Respondent is on the basis of his one third share in the suit well. Thus, the suit for injunction is based on title as claimed in the suit. Hence, it was not necessary for the first Respondent to specifically claim the relief of declaration. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE